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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 13, 1991

Ms. Chris G. Elizalde
Attorney for Nixon-Smilely I.S.D.
P. O. Box 2156
Austin, Texas 78768

OR91-090

Dear Ms. Elizalde:

You ask whether a report of a principal read to the school board in executive session, the tape recording of the principal's dictated notes from which the report was prepared, and written records of conferences between the superintendent and a teacher are subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11286.

The requested information relates to a teacher's complaints to the principal and superintendent about a student's behavior, and also contains the teacher's statements to them regarding his dissatisfaction with living and working in the community, discussions as to whether the teacher would terminate his employment with the school district and, if so, what monetary sums he was entitled to receive upon termination. The request was made by the teacher through an attorney.

We have considered the exceptions you claimed, specifically sections 3(a)(11) and 3(a)(14), and have reviewed the records at issue. The section 3(a)(14) exception for "student records" must be read in conjunction with the federal requirements embodied in the Family Educational Rights and Privacy Act hereinafter "FERPA"), 20 U.S.C. § 1232g. See V.T.C.S. art. 6252-17a, § 14(e) (release of records under the Open Records Act must be in conformity with FERPA); Open Records Decision No. 431 (1985). Student records protected under FERPA include any "personally identifiable information." 20 U.S.C. § 1232G(b). Much of the information in the requested materials either specifically identifies students, or refers to them in such a manner that their identities could be apparent to persons in the community. While FERPA excepts from its confidentiality requirements records sought by teachers and other school officials determined "to have legitimate educational interests," we do not believe, based on the information you provide, that the requestor teacher here, in seeking disclosure of the materials, has such "legitimate educational interests." See Id. § 1232g(b)(1)(A); see also, V.T.C.S. art. 6252-17a, § 3(a)(14) (although student records are excepted from public disclosure, records may be made


available on request to "educational institution personnel"). We note too that under FERPA and section 3(a)(14), references in the requested records to the teacher's own son, a student in the district, must be disclosed to the teacher, though not to the general public.

The other exception you claim is under section 3(a)(11) for inter- or intra-agency communications consisting of advice, opinion, or recommendation to be used in a deliberative process. See Open Records Decision No. 538 (1990). You argue that the entire audiotape recording of the principal's dictated notes used in preparing the report she read to the school board is excepted from required disclosure by section 3(a)(11). We agree. You say that no one except the principal listened to the tape and that the recorded material was edited by the principal in typing the written report. The tape is thus, in effect, a preliminary draft put in final form in the written report. Open Records Decision No. 559 (1990) ruled that such preliminary drafts were within the section 3(a)(11) exception.

Finally, you have marked portions of the principal's report and of the superintendent's records of the conferences with the teacher that you argue should, under section 3(a)(11), be excepted from required disclosure. We agree that some of the material thus marked is within the section 3(a)(11) exception as being "advice, opinion, or recommendation," and this may be withheld. Moreover, much of the unprotected material in these records is so closely intertwined with material that must be withheld under FERPA and sections 3(a)(14) or 3(a)(11) that severance would, we think, be impracticable. See Open Records Decision Nos. 313 (1982) 295 (1981). We have marked the portions of the principal's report and the records of the superintendent's conferences with the teacher that we believe must be withheld.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-090.

Yours very truly,


William Walker
Assistant Attorney General
Opinion Committee

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Ref.: ID# 11286
Enclosure: Marked Documents